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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 **DAVID MONTIEL CRUZ,**

Petitioner,

15 **v.**

16 **RICHARD SUBIO, Warden,**

Respondent.

C 07-4329 JSW (PR)

19 **ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS**
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13 **DAVID MONTIEL CRUZ,**

Petitioner,

14
15 v.

16 **RICHARD SUBIO, Warden,**

17 Respondent.
18

C 07-4329 JSW (PR)

**ANSWER TO PETITION FOR
WRIT OF HABEAS CORPUS**

19 Respondent provides this Answer to the Petition for Writ of Habeas Corpus:

20 I

21 CUSTODY

22 Petitioner, David Montiel Cruz, is lawfully in state custody pursuant to the 2005 judgment
23 for convictions of burglary, lewd and lascivious acts on a child by force during the commission of
24 burglary and kidnapping, kidnapping a child under 14 years, assault by means of force likely to
25 produce great bodily injury, inflicting pain or suffering on a child with use of a deadly weapon, and
26 sexual penetration by force during the commission of kidnapping and with personal use of a deadly
27 weapon, Cal. Penal Code §§ 207(a), 208(b), 245(a)(1), 273a(a), 288(b)(1), 289(a)(1), 459-460(a),
28 667.61(a)-(e), 12022(b)(1), 12022.3(a), for which he was sentenced to 90 years to life consecutive

1 to 12 years four months by the Santa Clara County Superior Court.

2 II

3 EXHAUSTION OF STATE REMEDIES

4 Petitioner has exhausted his state remedies with respect to the claims raised in his petition.
5 However, claim three, in which petitioner claims the prosecutor committed misconduct, has been
6 procedurally defaulted because petitioner failed to raise his constitutional objection in the trial court.
7 *Davis v. Woodford*, 384 F.3d 628, 654 (9th Cir. 2004).

8 III

9 STATEMENT OF FACTS AND PROCEDURE

10 Respondent incorporates by reference the statement of facts and procedure contained in
11 the accompanying memorandum of points and authorities in support of the answer.

12 IV

13 DENIAL OF CLAIMS

14 Respondent denies that petitioner's federal constitutional rights were violated in any way.
15 Specifically, respondent denies that petitioner's rights to due process and a fair trial under the Fifth,
16 Sixth, and Fourteenth Amendments were violated by the trial court's instructions at the competency,
17 guilt, and sanity phases, the admission of his statements to police, prosecutorial misconduct,
18 cumulative error, or sentencing error.

19 V

20 AVAILABLE TRANSCRIPTS AND RECORDS

21 Attached are the Clerk's and Reporter's Transcripts of the trial, together with other
22 relevant records, as indicated in the Index of State Court Records Lodged in Support of Answer,
23 incorporated herein by reference.

24 VI

25 GENERAL DENIAL

26 Except as otherwise admitted, respondent denies each and every allegation of the petition
27 which, if found true, would form the basis of federal habeas relief.

1 WHEREFORE, respondent respectfully requests that the petition for writ of habeas corpus
2 be denied.

3 Dated: May 6, 2008

4 Respectfully submitted,

5 EDMUND G. BROWN JR.
6 Attorney General of the State of California

7 DANE R. GILLETTE
8 Chief Assistant Attorney General

9 GERALD A. ENGLER
10 Senior Assistant Attorney General

11 PEGGY S. RUFFRA
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13 /s/ Joan Killeen
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15 Deputy Attorney General
16 Attorneys for Respondent
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